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EXAMINER
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte ROBERT H. KUMMER JR., JACQUES E. HASBANI
and LINDA S. LIN

_____

Appeal 2008-4091
Application 10/681,724
Technology Center 3600

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Decided:[1] March 26, 2009

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Before MURRIEL E. CRAWFORD, LINDA E. HORNER and
STEVEN D.A. McCARTHY, *Administrative Patent Judges.*

McCARTHY, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

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[1] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 CFR § 1.304, begins to run from the decided date
shown on this page of the decision. The time period does not run from the
Mail Date (paper delivery) or Notification Date (electronic delivery).

The Appellant has filed a "Request for Rehearing Pursuant to 37 C.F.R. § 41.52" ["Request"] seeking reconsideration of our Decision of September 26, 2008 ["Decision"] affirming the rejections of claims 11-20 under 35 U.S.C. § 103(a) (2002) as being unpatentable over Kulik (US 5,842,186, issued Nov. 24, 1998) and Ramsden (US 5,831,220, issued Nov. 3, 1998). We have jurisdiction over this request for rehearing under 35 U.S.C § 6(b) (2002). We DENY the Request for Rehearing.

The Appellants contend that the Board's statement that:

> The step of "determining whether said first class of service received from said user is appropriate for said mail piece using said determined weight and said determined at least one dimension" need not be performed during the processing of the mail piece of specifically for that mail piece

misapprehended or overlooked the nature of the subject matter of claim 11. (Request 4, citing Decision 7.) According to the Appellants, the "determining" step must be performed during the processing of each mail piece and specifically for the mail piece "since the determination as to whether the first class of service received from the user is appropriate for the mail piece is specifically tied to the determined weight and determined at least one dimension for that mail piece." (Request 4.)

Kulik discloses a software controlled mail processor. (Kulik, col. 4, ll. 52-55.) The mail processor includes a postage meter, a scale, a central processing unit and a non-volatile memory. (Kulik, col. 5, ll. 10-21.) The memory stores software which controls the functions of the mail processor. (*Id.*; Kulik, col. 5, ll. 28-31.). Kulik's software permits a user to enter a

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custom template. (Kulik, col. 6, ll. 28-30.) The custom template permits a user to select individual mail classes for processing of mail for different values of one or more parameters. (*See* Kulik, col. 3, ll. 4-8.) The Appellant contends that the entry of a custom template in Kulik is not the same as the subject matter of claim 11 (Request 4) and that the system of Kulik does not determine whether the first class of service received from a user is appropriate for a mail piece using a determined weight and a determined dimension (Request 6).

We adhere to the position that the task of "determining whether said first class of service received from said user is appropriate for said mail piece using said determined weight and said determined at least one dimension" need not be performed during the processing of the mail piece or specifically for that mail piece. In particular, claim 11 is not a method claim. Claim 11 recites a mail processing system including a memory storing software executable by a central processing unit to perform certain tasks. Claim 11 does not recite executing these instructions to perform the tasks, much less when or in what order these tasks must be performed.

The Appellants contend that the instructions must determine whether the first class of service received from the user is appropriate after determining the weight and the value of the at least one dimension of the mail piece, since the instructions must perform the determination of whether the first class of service is appropriate "using said determined weight and said determined at least one dimension." (*See* Request 4.) Interpreting claim 11 as broadly as is reasonable, the determined weight and the determined value of the at least one dimension are parameters. Software instructions for manipulating these parameters on the basis of appropriate

ranges of values for the parameters may be stored in a memory before specific values of the parameters are determined.

During the entry of a custom template, Kulik's software permits a user to enter a first class of service (Kulik, col. 9, ll. 16-17) and to input a selected upper limit for a controlling parameter such as weight within which the first class of service is to be applied (Kulik, col. 9, ll. 24-25). Suppose that the user enters a first class of service and selects an upper limit for weight or, as suggested by Ramsden, for the value of the at least one dimension for which the first class of service is inappropriate. Kulik's software would check the first class of service to determine if the class of service is available within the selected range and indicate an error if the selected upper limit of the parameter is not appropriate for the first class of service. (Kulik, col. 9, ll. 27-35.) Were an error indicated, the software would prompt the user to enter another class of service and an upper limit for the parameter for which that class of service is to be applied (Kulik, col. 9, ll. 46-52) and then check whether the selected upper limit is appropriate for the other class of service (Kulik, col. 9, ll. 27-35). The process would be repeated until the template was complete, that is, until either the first class of service or an appropriate second class of service was assigned to any mail piece having a weight and a value of the at least one dimension falling within the scope of the template.

If the user subsequently processed a mail piece determined to have a weight or a value of the at least one dimension between the actual upper limit for which the first class of service is appropriate and the selected upper limit which the software indicated to be erroneous, the software would have made a determination that the first class of service was not appropriate for

that mail piece. The software also would have determined a second class of service appropriate for the mail piece. The software would have used the determined weight and, as suggested by Ramsden, the determined at least one dimension parameters to make both determinations. This would have been true even though the determination would not have been made specifically for the mail piece or at the time that the mail piece was processed.

Therefore, Kulik and Ramsden would have suggested a mail processing system with a memory storing software executable by a central processing unit including instructions for determining whether a first class of service received from the user is appropriate for a mail piece using a determined weight and a determined at least one dimension, and if the first class of service is not appropriate, determining a second class of service for the mail piece using the determined weight and the determined at least one dimension, the second class of service being appropriate for the mail piece.

Consequently, the Appellant has not identified any point misapprehended or overlooked by the Board. Even were the Appellant correct in arguing that claim 11 is limited such that this task must be performed during the processing of the mail piece and specifically for that mail piece, Kulik and Ramsden would have suggested software including instructions for performing the task. Kulik's mail processor processes pieces of mail by determining a class of service corresponding to a weight range from the custom rate table within which the measured weight of the particular piece of mail falls. (Kulik, col. 7, ll. 3-7.) As the Examiner points out (*see* Ans. 4), Kulik at column 8, lines 38-44, provides an example in which Kulik's software determines whether a first class of service is

appropriate for a piece of mail using the determined weight and, if the first class of service is not appropriate, determining a second class of service for the mail piece using the determined weight. Ramsden would have suggested using both the determined weight and a determined at least one dimension to determine a class of service appropriate to the mail piece as recited in claim 11.

<div align="center">DECISION</div>

We DENY the Request for Rehearing.

<div align="center">DENIED</div>

vsh

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